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10/034,637	12/28/2001	David Charles Potts	KCC-13,776.1	9579

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,637

Applicant(s)

POTTS ET AL. *C.1*

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-29, 31-38, 40 and 41 is/are rejected.
- 7) ☒ Claim(s) 14, 30 and 39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5 &amp; 7-8</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11, 27 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 11, 27 and 36, the applicant claims that the density modulator reduces the density of the layer without lysing the red blood cells. Contrary to this assertion, the specification states on page 20, lines 12 – 13 that it is a high probability the GLUCOPON is not effectively lysing red blood cells with the usage of lower levels. Therefore, it is unclear whether or not the GLUCOPON does not lyse the red blood cells or if the GLUCOPON does not lyse as many red blood cells. Does the applicant intend to claim that the lysing of the red blood cells is reduced? Or is the specification in error? Clarification and/or correction are required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 – 7, 10, 13, 15, 17 – 23, 26, 29, 31 – 33 and 38 are rejected under 35 U.S.C. 102(a) as being anticipated by Yahiaoui et al. (WO 98/10134).

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With respect to claim 1, Yahiaoui et al. (hereinafter "Yahiaoui") discloses a personal care absorbent article comprising a personal care absorbent article comprising an outer cover layer, a liner layer and a containment layer between the outer cover and the liner layer, wherein at least one of the layers is treated with a density modulator as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Yahiaoui incorporates the reference of Bornslaeger (US 4,374,888) on page 10, lines 9 – 13 which discloses the personal care article comprising an outer layer (14), an liner layer (12) and a containment layer (16) between the outer cover and the liner layer as set forth in figure 1.

As to claims 2, 6, 10, 18, 22, 26 Yahiaoui discloses the density modulator is applied to the liner layer, the containment layer or both as set forth on page 2, lines 20 – 23. Yahiaoui discloses that the density modulator may be applied to a multilayer laminate on page 10, lines 9 – 13, which would include the liner layer, the containment layer and the outer cover as previously disclosed by Bornslaeger.

With reference to claims 3 – 5, 7, 19 – 21, 23 and 33 Yahiaoui discloses the density modulator being applied in a concentration of up to about 20%, between about 5% and 15%, or between about 8% and 12% by weight of the liner layer as set forth on page 11, lines 3 – 7.

As to claims 13, 29 and 38 Yahiaoui discloses an absorbent article wherein at least one layer treated with the density modulator is a nonwoven web material selected from the listed group as set forth on page 3, lines 2, lines 27 – 30.

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With respect to claims 15, 31 Yahiaoui discloses that the density modulator comprises alkyl glycoside as set forth on page 2, lines 34 – 36.

As to claim 17, see the rejection of claim 1. Additionally, Yahiaoui discloses a catamenial device as set forth on page 2, lines 20 – 30.

With reference to claim 32, see the rejection of claim 1. Bornslaeger teaches a porous synthetic substrate as set forth in the abstract and in col. 5, lines 19 – 35.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 – 9, 16, 24 – 25, 34 – 35 and 40 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yahiaoui et al. (WO 98/10134).

The difference between Yahiaoui and claim 8 is the provision that the density modulator is applied to the containment layer at a specific concentration.

Yahiaoui discloses that the density modulator is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

It would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

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With reference to claims 9, 24 – 25 and 34 – 35, see the rejection of claim 8.

Regarding claims 16, 39 and 40, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use) which includes a wound dressing, a sanitary pad and/or a tampon.

Claims 11 – 12, 27 – 28 and 36 – 37 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yahiaoui.

The difference between Yahiaoui and claim 11 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer which is identical to that claimed by the subject application.

Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it would be inherently disclosed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui. Further, the applicant has not clearly supported the statement that red blood cells are not lysed by the density modulator of the claimed invention. The applicant states that the red blood cells are probably not effectively lysed which would lead one to believe that some of the red blood cells are lysed.

With reference to claim 12, see the rejection of claim 11. Again, the same density modulator and concentration that is being used in the claimed invention has

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been disclosed by Yahiaoui. Therefore, while the exact thickness is not disclosed, it would be inherent that the layer would at least increase in thickness. And, this being the case, even if the thickness is not exactly 12%, the general conditions of the claim has been disclosed by the prior art, and it would only require a level of ordinary skill in the art to determine the optimum or workable range.

Regarding claims 27 and 36, see the rejection of claim 11.

With reference to claims 28 and 37, see the rejection of claim 12.

### ***Allowable Subject Matter***

Claims 14, 30 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Michele Kidwell*

Michele Kidwell  
June 29, 2003

*Wei Lun Lo*

WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700